

Guide for Using Judicial Council of California Criminal Jury Instructions (“CALCRIM”)

The Judicial Council jury instructions are accurate, designed to be easy to understand, and easy to use. This guide provides an introduction to the instructions and explains conventions and features that will assist in their use.

Judicial Council Instructions Endorsed by Rule of Court

Rule 855 of the California Rules of Court provides: “The California jury instructions approved by the Judicial Council are the official instructions for use in the state of California. . . .

[The Judicial Council endorses these instructions for use and makes every effort to ensure that they accurately state existing law. . . .]

[Use of the Judicial Council instructions is strongly encouraged.”]

Using the Instructions

Bench Notes

The text of each instruction is followed by a section in the Bench Notes titled “Instructional Duty,” which alerts the user to any *sua sponte* duties to instruct and special circumstances raised by the instruction. It may also include references to other instructions that should or should not be used. In some instances, the directions include suggestions for modification. In the “Authority” section, all of the pertinent sources for the instruction are listed, including secondary source materials. Some of the instructions also have sections containing “Related Issues” and “Commentary.” The Bench Notes also refer to any relevant lesser included offenses. Users should consult the Bench Notes before using an instruction.

Italicized notes between angle brackets in the language of the instruction itself signal important issues or choices. For example, in instruction 1750, Receiving Stolen Property, optional element 3 is introduced thus: *<Give element 3 when instructing on knowledge of presence of property; see Bench Notes>*.

Multiple-Defendant and Multiple-Count Cases

These instructions were drafted for the common case in which a single defendant is on trial. The HotDocs document assembly program from the Judicial Council’s official publisher, LexisNexis will, however, modify the instructions for use in multi-defendant cases. It will also allow the user to name the defendants charged in a particular instruction if the instruction applies only to some of the defendants on trial in the case.

It is impossible to predict the possible fact combinations that may be present when a crime is charged multiple times or committed by different defendants against different victims involving different facts. Thus, when an instruction is being used

for more than one count and the factual basis for the instruction is different for the different counts, the user will need to modify the instruction as appropriate.

Related California Jury Instructions, Criminal (CALJIC)

The CALJIC and CALCRIM instructions should *never* be used together. While the legal principles are obviously the same, the organization of concepts is approached differently. Trying to mix the two sets of instructions into a unified whole cannot be done and may result in omissions or confusion that could severely compromise clarity and accuracy. Nevertheless, for convenient reference this publication includes tables of related CALJIC instructions.

Titles and Definitions

The titles of the instructions are directed to lawyers and sometimes use words and phrases not used in the instructions themselves. The title is not a part of the instruction. The titles may be removed before presentation to the jury.

The instructions avoid separate definitions of legal terms whenever possible. Instead, definitions have been incorporated into the language of the instructions in which the terms appear. When a definition is lengthy, a cross-reference to that definition is provided.

Defined terms are printed in italics in the text of the definition.

Alternatives vs. Options

When the user must choose one of two or more options in order to complete the instruction, the choice of necessary alternatives is presented in parentheses thus:

When the defendant acted, George Jones was performing (his/her) duties as a school employee.

The instructions use brackets to provide optional choices that may be necessary or appropriate, depending on the individual circumstances of the case: *[If you find that George Jones threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]*

Finally, both parentheses and brackets may appear in the same sentence to indicate options that arise depending on which necessary alternatives are selected: *[It is not required that the person killed be the (victim/intended victim) of the (felony/ [or] felonies).].*

General and Specific Intent

The instructions do not use the terms general and specific intent because while these terms are very familiar to judges and lawyers, they are novel and often confusing to many jurors. Instead, if the defendant must specifically intend to commit an act, the particular intent required is expressed without using the term of art "specific intent." Instructions 250–254 provide jurors with additional guidance on specific vs. general intent crimes and the union of act and intent.

Organization of the Instructions

The instructions are organized into 24 series, which reflect broad categories of crime (e.g., Homicide) and other components of the trial (e.g., Evidence). The series, and the instructions within each series, are presented in the order in which they are likely to be given in an actual trial. As a result, greater offenses (like DUI with injury) come before lesser offenses (DUI). All of the defenses are grouped together at the end of the instructions, rather than dispersed throughout. The misdemeanors are placed within the category of instructions to which they belong, so simple battery is found with the other battery instructions rather than in a stand-alone misdemeanor section.

Lesser Included Offenses

Users will need to modify instructions used to explain lesser included offenses. The introductory language states: “The crime of _____ (e.g., false imprisonment) is a lesser offense than the crime of _____ (e.g., kidnapping).” This would replace the standard introductory sentence, “The defendant is charged with” In addition, the user must add to the end of the instruction on any lesser offense an explanation of the burden of proof as required by *People v. Dewberry* (1992) 8 Cal.App.4th 1017, 1021. That addition is: “The People have the burden of proving that the defendant committed _____ (insert greater offense, e.g., kidnapping) rather than a lesser offense. If the People have not met this burden, you must find the defendant not guilty of _____ (insert greater offense, e.g., kidnapping).”

Burden of Production/Burden of Proof

The instructions never refer to the “burden of producing evidence.” The drafters concluded that it is the court’s decision whether the party has met the burden of production. If the burden is not met, no further instruction is necessary. The question for the jury is whether a party has met its properly allocated burden based on the evidence received.

Instruction 103 on Reasonable Doubt states, “Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].” Thus, when the concept of reasonable doubt is explained and defined, the jury is told that it is the standard that applies to every issue the People must prove, unless the court specifically informs the jury otherwise.

Sentencing Factors and Enhancements

Because the law is rapidly evolving regarding when sentencing factors and enhancements must be submitted to the jury, we have provided “template” instructions 3250 and 3251 so that the court may tailor an appropriate instruction that corresponds to this emerging body of law.